

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

HOLCOMBE, et. al,

Plaintiffs

vs.

UNITED STATES OF  
AMERICA,

Defendant

NO. 5:18-CV-00555-XR

(consolidated cases)

**PLAINTIFFS' RESPONSE TO THE GOVERNMENT'S  
MOTION TO RECONSIDER SANCTIONS**

Rule 26(g)(1) requires a party to ground its discovery responses in fact or law. *See Heller v. City of Dallas*, 303 F.R.D. 466, 476–77 (N.D. Tex. 2014). Because the Government botched the most basic discovery rule, sanctions were appropriate and continue to be appropriate to deter future wrongful conduct.

First, the Government's discovery responses were divorced from fact. For example, the Government took the position that a "substantial portion, if not most," of the DODIG Report *on the Sutherland Springs shooting* was not relevant to this case. U.S. Mot. Protective Order, at 9 (ECF No. 124). And while the Government's Original Answers assert at least sixteen (16) Affirmative Defenses, the Government cannot identify a single witness to disclose under Rule 26. In the same way, the Government also refused to respond to Plaintiffs' interrogatory requesting the identity of individuals with knowledge. The Government knew—when it objected and refused to respond to this

interrogatory—that the Court would not “consider objections to these interrogatories, except upon a showing of exceptional circumstances.” W.D. Tex. Civ. R. CV-33(b)(1); *see Heller*, 303 F.R.D. at 477 (“at the time it was signed,” the request must be grounded in fact and law).

Second, the Government’s discovery obstruction had no good-faith legal basis nor exceptional circumstances to warrant its behavior. Here, the Government continues to assert that “concerns about reprisal” justified their obstruction and need for protection. U.S. Mot. Recon. 9 (Oct. 30, 2019) (ECF No. 155). But the Government forgets that it admitted on the record that it has not received any credible threats to the safety of these individuals. Hr’g Tr. 7:10–13 (Sept. 25, 2019). Importantly, broad “allegations of harm, unsubstantiated by specific examples or articulated reason” do not support a good cause showing for protection. *Glenmede Trust Co. v. Thompson*, 56 F.3d 476 (3d Cir. 1995) (cleaned up). And the Government never provided affidavits or **any evidence** to support its claim for protection. *See in re Terra Intern., Inc.*, 134 F.3d 302, 306 (5th Cir. 1998).

In sum, the Court’s reasonable, if not restrained, sanctions order was appropriate. Plaintiffs ask the Court to deny the Government’s invitation to re-litigate these issues and deny its Motion for Reconsideration.

Respectfully Submitted,

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## **CERTIFICATE OF SERVICE**

By our signatures above, we certify that a copy of Plaintiffs' Response to the Government's Motion to Reconsider Sanctions has been sent to the following on October 31, 2019 via the Court's CM/ECF notice system.

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